

FEDERAL CIRCUIT COURT OF AUSTRALIA

*MASSAQUOI v MINISTER FOR
IMMIGRATION & ANOR*

[2016] FCCA 2524

Catchwords:

MIGRATION – Review of Administrative Appeals Tribunal decision – refusal of a provisional partner visa – Tribunal finding that the parties were not in a genuine and continuing relationship – no jurisdictional error.

Legislation:

Migration Act 1958 (Cth), ss.5F, 359AA
Migration Regulations 1994 (Cth)

Cases cited:

Abebe v Commonwealth of Australia (1999) 197 CLR 510
Applicant WAEE v Minister for Immigration (2003) 75 ALD 630
Minister for Aboriginal Affairs v Peko-Wallsend Ltd (1986) 162 CLR 24
Minister for Immigration v Eshetu (1999) 197 CLR 611
Minister for Immigration v Lat (2006) 151 FCR 214
Minister for Immigration v Li (2013) 297 ALR 225
Minister for Immigration v SZMDS & Anor (2010) 240 CLR 611
Minister for Immigration v SZJSS (2010) 243 CLR 164
Minister for Immigration v SZNSP (2010) 184 FCR 485
Minister for Immigration v VSAF of 2003 [2005] FCAFC 73
Minister for Immigration v Wu Shan Liang (1996) 185 CLR 259
Re: Minister for Immigration; Ex parte Applicant S20/2002 (2003) 198 ALR 59
SJSB v Minister for Immigration [2004] FCAFC 225
SZOOR v Minister for Immigration & Anor (2012) 202 FCR 1

Applicant: MARY MASSAQUOI

First Respondent: MINISTER FOR IMMIGRATION AND
BORDER PROTECTION

Second Respondent: ADMINISTRATIVE APPEALS
TRIBUNAL

File Number: SYG 2811 of 2015

Judgment of: Judge Driver

Hearing date: 29 September 2016

Delivered at: Sydney

Delivered on: 28 October 2016

REPRESENTATION

Counsel for the Applicant: Ms L Snelling

Solicitors for the Applicant: Macarthur Law Group Pty Ltd

Solicitors for the Respondents: Ms A Wong of Mills Oakley

ORDERS

(1) The application filed on 15 October 2015 is dismissed.

(i)

FEDERAL CIRCUIT COURT

OF AUSTRALIA

AT SYDNEY

SYG 2811 of 2015

MARY MASSAQUOI

Applicant

And

MINISTER FOR IMMIGRATION AND BORDER PROTECTION

First Respondent

ADMINISTRATIVE APPEALS TRIBUNAL

Second Respondent

REASONS FOR JUDGMENT

Introduction and background

1. The applicant, Ms Massaquoi, is married to a Liberian man (Mr Senwah). Mr Senwah was refused a provisional partner visa by a delegate of the Minister (delegate) and that decision was affirmed on review by the Administrative Appeals Tribunal (Tribunal) on 9 September 2015. Ms Massaquoi is entitled to have the decision of the Tribunal judicially reviewed and her application is the subject of this proceeding.
2. The following statement of background facts is derived from the submissions of the parties.

3. Ms Massaquoi was born in Liberia in 1965 and migrated to Australia on 8 August 2007 after being granted a refugee visa (subclass 200). She was granted Australian citizenship on 31 May 2012. Mr Senwah, the visa applicant, was born in Liberia in 1964 and is a citizen of Liberia. He remains off-shore.
4. The parties claimed they met in Sierra Leone on 5 June 2007 and formed a committed relationship on 3 July 2007. Mr Senwah applied for a prospective marriage visa (subclass 300) on 8 March 2012. On 11 October 2013, a delegate of the Minister refused the application¹. Ms Massaquoi and Mr Senwah were married in Liberia on 8 February 2014.
5. On 12 May 2014, Mr Senwah applied for a partner (Provisional) (Class UF) visa². He was sponsored for the visa by Ms Massaquoi³. Several documents were provided to the Minister's Department in support of the visa application. These included written statements by Mr Senwah⁴ and Ms Massaquoi⁵, certificates concerning Mr Senwah and his invitation to Ms Massaquoi to marry her⁶. Supporting statutory declarations were also supplied by Ms Massaquoi's niece, Ms Sarah Nyumah⁷ and Ms Massaquoi's friend, Ms Ellen McGill⁸. Copies of Ms Massaquoi's travel documents⁹, medical certificate¹⁰, Australian citizenship certificate¹¹ and a page of her passport¹² were also provided. Additional material provided included email correspondence between Ms Massaquoi and Mr Senwah¹³, a copy of their marriage certificate¹⁴, a treasury receipt¹⁵, telephone records for Ms Massaquoi from

¹Court Book (CB) 1-6

² CB 7-27

³ CB 28-37

⁴ CB 38-39

⁵ CB 40-41

⁶ CB 60-63

⁷ CB 64-68

⁸ CB 69-72

⁹ CB 73-74

¹⁰ CB 75

¹¹ CB 79

¹² CB 83

¹³ CB 76-78

¹⁴ CB 81, 82

¹⁵ CB 80

December 2013 to April 2014¹⁶, money transfers from Ms Massaquoi to Mr Senwah¹⁷, payslips for Mr Senwah¹⁸ and copies of various photographs¹⁹.

6. In a decision dated 17 September 2014 and notified to Mr Senwah on the same date, a delegate in the Australian High Commission at Pretoria refused the visa application. The delegate found that claims and evidence provided in support of the visa application were not credible or genuine and was not satisfied Mr Senwah satisfied the criteria for the grant of the visa²⁰.

The Tribunal

7. On 10 December 2014, Ms Massaquoi's appointed legal representative lodged an application for review with the Tribunal²¹. Included with the application were copies of the delegate's decision²², email correspondence between Ms Massaquoi and the Minister's Department²³ and a medical certificate for Ms Massaquoi²⁴.
8. On 19 February 2015, the previously-constituted Tribunal invited Ms Massaquoi to comment on the validity of the application for review²⁵. Ms Massaquoi responded through her appointed representative²⁶ and in a decision dated 19 March 2015, the previously-constituted Tribunal made a decision that it did not have jurisdiction to review the delegate's decision as the application was not lodged within the prescribed time period²⁷. That decision was subsequently remitted for reconsideration by order of this Court²⁸.

¹⁶ CB 84-94

¹⁷ CB 95-107

¹⁸ CB 108

¹⁹ CB 109-138

²⁰ CB 144-148

²¹ CB 149-161

²² see item 28(b) of CB index; CB 330, [14]

²³ CB 162

²⁴ CB 163

²⁵ CB 164-166

²⁶ CB 167-170

²⁷ CB 171-177

²⁸ CB 178-182

9. On 7 July 2015, Ms Massaquoi was invited to a hearing scheduled on 14 August 2015²⁹. Ms Massaquoi accepted the invitation and also confirmed that Mr Senwah would give evidence by phone and requested that evidence also be taken from her niece, Ms Sarah Nyumah and sister-in-law (Mr Senwah's sister), "Helen Jermon"³⁰.
10. On 7 August 2015, Ms Massaquoi's representatives faxed a letter to the Tribunal³¹ that included written submissions³² and statements from Mr Senwah's sister, Hanna Jermon Senwah³³, Ms Massaquoi's niece, Ms Nyumah³⁴ and Ms Massaquoi³⁵. The fax also included copies of money transfer slips, travel documents, a transfer deed, a reference letter, a marriage certificate, photographs, country reports, medical and other records³⁶. A further copy of the letter and its annexures were posted to the Tribunal and received on 13 August 2015³⁷.
11. Ms Massaquoi attended the hearing on 14 August 2015 with her representative. Mr Senwah, his sister (Ms Jermon Senwah) and Ms Massaquoi's niece (Ms Nyumah) also gave evidence at the hearing by phone³⁸. A written statement from Ms Jermon Senwah was also provided at the hearing³⁹.
12. On 28 August 2015, Ms Massaquoi's representative faxed a letter to the Tribunal⁴⁰ enclosing written submissions⁴¹ and further statements from Mr Senwah⁴², Ms Massaquoi⁴³, Ms Massaquoi's two daughters, Adama Sesay⁴⁴ and Kadie Samura⁴⁵, and a notarised statement from Mr

²⁹ CB 183-186

³⁰ CB 187-188

³¹ CB 189-190

³² CB 191-195

³³ CB 196-197

³⁴ CB 198-199

³⁵ CB 200-203

³⁶ CB 204-288

³⁷ CB 289-290, and items 41(a)-(d) of the CB index

³⁸ CB 291-292

³⁹ CB 293-294

⁴⁰ CB 295-296

⁴¹ CB 297-300

⁴² CB 301-302

⁴³ CB 303-304

⁴⁴ CB 305-306

⁴⁵ CB 307-308

Senwah's sister, Ms Jermon Senwah⁴⁶. Also enclosed with the fax were copies of a title deed for a property purchased by Ms Massaquoi and Mr Senwah⁴⁷, money transfer slips from Ms Massaquoi to Mr Senwah in 2011 and 2012⁴⁸ and photographs and identity cards⁴⁹. A further copy of the letter and the documents it enclosed were posted to the Tribunal and received on 1 September 2015⁵⁰.

13. At the hearing, the Tribunal followed the procedure in s.359AA and put to Ms Massaquoi oral particulars of several inconsistencies it identified in the evidence given by Ms Massaquoi and Mr Senwah. The inconsistencies related to information about: who Ms Massaquoi was living with in Freetown when Mr Senwah stayed with her; who Ms Massaquoi was living with at the time of the Tribunal hearing and the whereabouts of Mr Senwah's son and whether he had been located since the Liberian Civil War. Ms Massaquoi responded to these matters at the hearing but her representative requested a further two weeks to respond, which the Tribunal granted⁵¹. The Tribunal⁵² considered the materials provided after the hearing on 28 August 2015, including the written submissions addressing the inconsistencies identified by the Tribunal⁵³.

The Tribunal decision

14. The Tribunal made a decision on 9 September 2015⁵⁴ and notified Ms Massaquoi through her representative on 10 September 2015⁵⁵.
15. The Tribunal considered the documents Ms Massaquoi provided to the Department⁵⁶ and to the Tribunal⁵⁷. In addition, the Tribunal

⁴⁶ CB 314-316

⁴⁷ CB 309-310

⁴⁸ CB 311-313

⁴⁹ CB 317-321

⁵⁰ CB 322-323, and item 45(a) of the CB index

⁵¹ CB 334, [46]-[47]

⁵² at CB 334-335, [48]

⁵³ CB 297-300

⁵⁴ CB 328-340

⁵⁵ CB 325-327

⁵⁶ CB 330, [13]

⁵⁷ CB 330, [15] – see also, CB 335, [50]

summarised the oral evidence given at the hearing by Ms Massaquoi⁵⁸. It also summarised the oral evidence of Ms Nyumah⁵⁹, Mr Senwah's sister Ms Jermon Senwah⁶⁰ and Mr Senwah⁶¹ who appeared at the hearing by telephone⁶².

16. In relation to the inconsistencies put to Ms Massaquoi pursuant to s.359AA, the Tribunal accepted several of the explanations provided by Ms Massaquoi and placed no weight on three of the inconsistent matters it had identified. However, the Tribunal found it was "significant" that Ms Massaquoi was unaware that Mr Senwah's son had been located after the war and was currently living in Liberia with his partner and child. After considering the length of the claimed relationship and that Ms Massaquoi travelled to Liberia for her mother's funeral and her wedding to Mr Senwah, the Tribunal placed weight on this inconsistency⁶³.
17. As the Tribunal noted⁶⁴, it was a primary criterion for the grant of a subclass 309 visa that Mr Senwah was the spouse or de facto partner of his sponsor (namely, Ms Massaquoi) at the time of application and decision⁶⁵. A person is the "spouse" of another person if the two persons are in a married relationship as defined by s.5F of the *Migration Act 1958* (Cth) (Migration Act). In determining whether a married relationship exists, the Tribunal must take into account the matters set out in regulation 1.15A of the Regulations namely:
 18. (1) the financial aspects of the relationship;
 19. (2) the nature of the household;
 20. (3) the social aspects of the relationship and

⁵⁸ CB 330-333, [17]-[36]

⁵⁹ CB 333, [37]

⁶⁰ CB 333, [38]

⁶¹ CB 333-334, [39]-[45]

⁶² CB 329, [5]

⁶³ CB 335, [52]

⁶⁴ at CB 335-336, [53]-[54]

⁶⁵ clause 309.211 and clause 309.221 of Schedule 2 to the *Migration Regulations 1994* (Cth)(Regulations)

21. (4) the nature of the persons' commitment to each other. The Tribunal considered each of these aspects in relation to the claimed relationship.
22. The Tribunal accepted on the evidence before it that Ms Massaquoi and Mr Senwah were validly married in February 2014⁶⁶ but was not satisfied they were in a genuine and continuing relationship at the time of application and decision, or that they had a mutual commitment to a shared life as husband and wife to the exclusion of all others, or that they intended to live together or not separately and apart on a permanent basis⁶⁷.
23. In relation to the financial aspects of the relationship, the Tribunal accepted that Ms Massaquoi had sent money to Mr Senwah since 2011, it did not accept she had provided any financial support prior to 2011⁶⁸. It also accepted Ms Massaquoi and Mr Senwah had opened a joint bank account in Liberia in 2014 but noted there was limited evidence that they were both contributing to that account⁶⁹. It also accepted that the parties had jointly purchased land in Liberia for US\$500 and were saving to build a home on their land⁷⁰. However, the Tribunal placed limited weight on the financial aspects of the couple's relationship as they lived in different countries⁷¹.
24. In relation to the nature of the household, the Tribunal noted Ms Massaquoi and Mr Senwah gave consistent evidence about living together for six weeks in Freetown in 2007 and this was supported by witness statements from two of Ms Massaquoi's daughters. However, the Tribunal was not prepared to accept this claim given the lack of "independent evidence" and because it did not find the parties' account of the circumstances in which they met and formed a relationship in Freetown was credible. In particular, it found the parties' evidence "not convincing" that Ms Massaquoi allowed Mr Senwah to stay in her

⁶⁶ CB 336, [55]

⁶⁷ CB 339-340, [81]-[82]

⁶⁸ CB 336, [57]

⁶⁹ CB 336, [58]

⁷⁰ CB 336, [59]

⁷¹ CB 336, [60]

single room hut for six weeks with her and her four daughters when they had only known each other for less than a week⁷².

25. It accepted that Ms Massaquoi and Mr Senwah had lived together for four weeks at the home of Mr Senwah's sister during Ms Massaquoi's visits to Liberia in 2013 and 2014⁷³ but found they did not have any joint responsibility for the care and support of children⁷⁴. The Tribunal also noted Ms Massaquoi's evidence that she did not see Mr Senwah between 2007 and 2013 because she could not afford to travel to Africa, had health problems and due to the Ebola crisis. Whilst acknowledging the high cost of travel to Africa, the Tribunal found the money transfer receipts Ms Massaquoi provided demonstrated her financial capacity. It also found the Ebola epidemic did not adequately explain the lack of personal contact between the parties for six years after their engagement given that Ms Massaquoi travelled to Liberia in 2013 and 2014 before Ebola was contained⁷⁵. For these reasons, the Tribunal placed "some weight" on the limited period the parties had spent together since the inception of their relationship⁷⁶.
26. Regarding the social aspects of the relationship, the Tribunal noted the parties had claimed they held a traditional engagement in Freetown in 2007 but their photos of the event had been stolen. It did not accept that this explanation was convincing and expected that, given the significance of the event, other attendees would have taken photographs⁷⁷.
27. The Tribunal accepted Ms Massaquoi attended the funeral of Mr Senwah's mother in February 2013, the parties had a marriage celebration in February 2014 at the home of Mr Senwah's sister and expressly considered the photographs of the wedding, the supporting statements of Ms Massaquoi's daughters and the oral evidence of her niece and Mr Senwah's sister⁷⁸. The Tribunal accepted on the basis of the available evidence that there was some societal recognition of the

⁷² CB 336-337, [61]

⁷³ CB 337, [62]

⁷⁴ CB 337, [63]

⁷⁵ CB 337, [64]

⁷⁶ CB 337, [65]

⁷⁷ CB 337, [66]

⁷⁸ CB 337, [67]-[68]

relationship and the parties represented themselves to their immediate family and friends as being in a marital relationship. However, other than a letter from Ms Massaquoi's general practitioner⁷⁹, the Tribunal found there was "limited evidence before the Tribunal to indicate that the parties' relationship" was recognised more broadly in the community, either in Australia or Liberia⁸⁰.

28. In considering the nature of the parties' commitment to each other, the Tribunal had concerns about the "rapid inception of the parties' relationship" and was not persuaded by Ms Massaquoi's explanation at the hearing that she felt she knew Mr Senwah well enough to marry him despite the short period of their acquaintance. It expected she would have been much more cautious given that she was residing with her four daughters at the time. It also had concerns about the parties' evidence that Ms Massaquoi invited Mr Senwah to stay in her single-room hut with her four daughters despite only meeting him the previous week. It did not find Ms Massaquoi's explanations for this conduct persuasive and did not accept that they lived together in Sierra Leone in 2007 as they had claimed⁸¹. The Tribunal expressly considered the supporting statements from Ms Massaquoi's two daughters but found this evidence did not overcome its concerns about the relationship⁸².
29. The Tribunal considered the telephone records provided by Ms Massaquoi and accepted that she and Mr Senwah had regular telephone contact, but noted there was no independent evidence of telephone contact between them prior to 2011⁸³. It also noted Ms Massaquoi's evidence that: she was unaware that Mr Senwah's son, his partner and their daughter were living in Monrovia; the son had been located in 2007 after the war; Ms Massaquoi had never met Mr Senwah's son despite her trips to Liberia in 2013 and 2014; and Ms Massaquoi "had no idea" of the age of Mr Senwah's son or his granddaughter. The Tribunal expected Ms Massaquoi would have been aware of such

⁷⁹ see CB 274

⁸⁰ CB 337, [69]

⁸¹ CB 338, [70]-[71]

⁸² CB 338, [72]

⁸³ CB 338, [73]

information given that the parties had spent four weeks together in recent years and communicated daily⁸⁴.

30. The Tribunal considered the oral evidence, the supporting statutory declarations and statements from witnesses and the supporting letter from Ms Massaquoi's doctor about her treatment for depression and anxiety but was not satisfied that such evidence outweighed the other evidence before the Tribunal⁸⁵. It noted Ms Massaquoi's evidence that she named her daughter as the beneficiary of her superannuation and life insurance policy and found it "noteworthy" that no provision had been made for Mr Senwah, which it expected would have occurred given his limited means⁸⁶.
31. The Tribunal accepted the parties gave consistent evidence about their future plans and found their joint purchase of land demonstrated some commitment to the relationship, as did Ms Massaquoi's financial transfers to Mr Senwah⁸⁷. The Tribunal also considered the parties' evidence about their decision to knowingly submit a fraudulent photograph with their prospective marriage visa application and acknowledged their contrition but found their preparedness to provide a fraudulent photograph to the Minister's Department impacted adversely on their general credibility⁸⁸. The Tribunal also placed weight on Ms Massaquoi's lack of travel to spend time with Mr Senwah since the relationship commenced, noting they had only spent four weeks together since Ms Massaquoi migrated to Australia in August 2007⁸⁹. It found there was "insufficient evidence" that the parties provided one another with companionship or emotional support. Even though the Tribunal gave some weight to the supporting evidence that was provided, it found this evidence did not overcome the other concerns it had identified⁹⁰.
32. After weighing up the entirety of the evidence before it, the Tribunal was not satisfied that the parties had a long term commitment to the

⁸⁴ CB 338, [74]

⁸⁵ CB 338, [75]

⁸⁶ CB 339, [76]

⁸⁷ CB 339, [77]

⁸⁸ CB 339, [78]

⁸⁹ CB 339, [79]

⁹⁰ CB 339, [80]

relationship⁹¹. Accordingly, it was not satisfied that they were in a genuine spousal relationship as defined by s.5F of the Migration Act and found the visa applicant therefore did not meet clause 309.211(2) and clause 309.221 of the Regulations⁹².

The present proceedings

33. Ms Massaquoi relies upon her judicial review application filed on 15 October 2015. The grounds of review raised by that application are:

1. *The decision was not supported by the probative evidence*

Particulars

(A) *The decision was made without proper consideration of the probative evidence:*

(B) *The Tribunal found that the Applicant's relationship was not genuine. There was no evidence to support that finding and it was not open to the Tribunal to make such a finding.*

2. *The Tribunal failed to conduct the review required by law*

Particulars:

(A) *The Tribunal failed to conduct the review required by law.*

(B) *The Tribunal failed to have proper regard to the supporting evidence before it, despite having to do so, because once it formed a view that the Applicant's relationship was not genuine, it considered any evidence given in relation to the Applicant's relationship had no probative value.*

(C) *The Tribunal was required to determine the application for review on the merits of the case before it. It failed to do so because once it formed an adverse view about the Applicant's previous failed application for a Prospective Marriage Visa, it did not look at the merits of the case before it.*

3. *The decision of the Tribunal is irrational or arbitrary*

⁹¹ CB 339, [81]

⁹² CB 340, [82]-[84]

Particulars

(A) The decision of the Tribunal is irrational or arbitrary.

- (i) The decision of the Tribunal is irrational or arbitrary because the Tribunal failed to have proper regard to the supporting evidence before it. The Tribunal was required to determine the application before it on the evidence before it, not on evidence provided in a previous application for a Prospective Marriage Visa.*

4. *The Tribunal failed to have regard to the claims made*

Particulars:

(A) That the Applicant sponsor and the Primary Applicant were formally engaged in 2007 and married in 2014 and the marriage was a bond fide marriage.

5. *The decision of the Tribunal is unreasonable*

Particulars:

(A) The decision of the Tribunal is unreasonable as;

- (i) The Tribunal failed to put any weight on extensive evidence of ongoing communication via telephone and email and evidence from third parties and found that it was essentially fabricated to show that a genuine relationship existed when it was not a genuine relationship.*
- (ii) The Tribunal considered that the Applicant is not in a genuine relationship with her husband.*
- (iii) That the Applicant's evidence to the Tribunal of the circumstances of the parties meeting and development of their relationship was disregarded and the standards applied to test that evidence were not realistic or appropriate in light of the cultural and geographical situation of the parties.*
- (iv) The evidence before the Tribunal was such that a reasonable mind would consider the relationship between the Applicant and Mr Senwah is genuine.*

6. *In the absence of probative evidence the Tribunal found against the genuineness of that relationship in circumstances where:*

a. *It was noted the applicant's daughters had been unable to travel to attend their mother's wedding without consideration of the Applicant's evidence it was costly and she lacked the financial ability to pay for their travel.*

b. *The applicant had not been able to provide accurate information about her husband's son whom she had never met and who had been missing from her husband's life for many years due to displacement within Monrovia.*

c. *Evidence of the Applicant Sponsor's financial circumstances and employment commitments was disregarded in finding she had not travelled regularly or frequently to be with her husband this being indicative of a lack of commitment or a genuine relationship.*

7. *As a result of the Tribunal's adverse credibility finding in respect of the Applicant Sponsor's relationship with the Visa applicant, it did not properly consider the merits of the case before it.*

(A) *The Tribunal did not properly assess the evidence of ongoing communication, financial contributions, joint savings and property and genuine love and commitment of the parties when finding against evidence probative of a genuine and committed relationship in terms of the Act.*

34. The application is supported by an affidavit by Ms Massaquoi made on 27 January 2016, to which are attached a bundle of documents, many of which are reproduced in the court book filed on 18 December 2015, which I also have before me as evidence.

35. Ms Massaquoi and the Minister both made written and oral submissions.

Consideration

Ground 1 – was the decision supported by probative evidence?

36. Ms Massaquoi contends that the Tribunal's finding that she and Mr Senwah were not in a committed relationship is not supported by probative evidence. She contends that the Tribunal misdirected itself by applying a subjective expectation of the behaviour of persons in a genuine relationship.
37. I am unpersuaded by these contentions. In my opinion, the Tribunal applied the correct test to the task it had to perform and weighed the available information. The decision was not an easy one to make given that Ms Massaquoi and Mr Senwah live half a world apart from each other and see each other infrequently. They are both also mature age persons with adult children from prior relationships which would naturally impact on the nature of their relationship. It is probably fair to say that the outcome in the case was a finely balanced one. I am unable to find, however, that the Tribunal fell into jurisdictional error in the manner alleged.
38. The Tribunal is not in the position of a contradictor in proceedings before it. It was for Ms Massaquoi to advance whatever evidence or argument they wished to advance in support of their contention that they were in a genuine relationship⁹³. The legislative scheme did not require the Tribunal to be positively satisfied that the relationship was *not* genuine⁹⁴. The Tribunal's factual findings in this regard were open to it on the evidence before it. The assertion that the Tribunal "misdirected itself about the question it had to answer" cannot be made out. The Tribunal clearly understood that the issue before it was whether the parties were in a genuine spousal relationship⁹⁵. In answering this question, the Tribunal had regard to all the circumstances of the relationship⁹⁶. This ground fails.

⁹³ *Abebe v Commonwealth of Australia* (1999) 197 CLR 510 at 576 at [187]

⁹⁴ *SJSB v Minister for Immigration* [2004] FCAFC 225 at [15]; *Minister for Immigration v Lat* (2006) 151 FCR 214 at [76]; *Minister for Immigration v VSAF of 2003* [2005] FCAFC 73

⁹⁵ CB 335, [53]-[54]

⁹⁶ CB 336, [56] - CB 339, [81]

Ground 2 – did the Tribunal have proper regard to the evidence before it?

39. There is no substance to this ground. I accept the Minister's submissions in relation to it.
40. The Tribunal set out the delegate's findings merely by way of background⁹⁷. The Tribunal noted that the delegate had placed weight on a fraudulently altered photograph submitted by the parties. However the Tribunal, independently at the hearing, asked Ms Massaquoi⁹⁸ and Mr Senwah⁹⁹ about the fraudulent photo. Both Ms Massaquoi and Mr Senwah conceded that the photo was fraudulent and were sorry for "what they did". Accordingly, any allegation that the Tribunal simply relied on the delegate's findings, cannot be made out.
41. The particulars are at odds with the ground and suggest the Tribunal failed to conduct the review because it only considered Ms Massaquoi's supporting documents after it found the relationship was not genuine and did not consider the merits of the case because it had already formed an adverse view of Mr Senwah's prospective marriage visa.
42. There is nothing in the Tribunal's decision to support Ms Massaquoi's contentions. The Tribunal considered the supporting documents and evidence presented, but found they did not overcome the concerns it identified with the credibility of the parties' evidence. It was for the Tribunal to attribute weight to the evidence before it¹⁰⁰. Ms Massaquoi's criticism of the weight attached to evidence by the Tribunal is, in substance, an impermissible invitation to engage in merits review of the Tribunal's factual conclusions¹⁰¹. Further, as pointed out in *Re Minister for Immigration; Ex parte Applicant S20/2002* at [14] per Gleeson CJ¹⁰², the expression of conclusions in a particular sequence does not indicate a failure to consider the evidence

⁹⁷ CB 330, [14]

⁹⁸ CB 334, [43]

⁹⁹ CB 331, [23]

¹⁰⁰ *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* (1986) 162 CLR 24 at 41 per Mason J

¹⁰¹ *Minister for Immigration v Eshetu* (1999) 197 CLR 611 at [44]-[45]

¹⁰² *Re Minister for Immigration; Ex parte Applicant S20/2002* (2003) 198 ALR 59 (HCA)

as a whole. The Tribunal also does not have to mention every item of evidence before it¹⁰³. There is no proper basis for the complaints in Ground 2 and no error in the Tribunal's approach.

Ground 3 – was the Tribunal decision irrational or arbitrary?

43. There is no doubt that the Tribunal's analysis of the material before it was something about which reasonable minds could differ. Ms Massaquoi contends that the Tribunal relied improperly on a decision of a delegate concerning a previous prospective marriage visa application. I reject that contention. I accept the Minister's submissions on this ground.
44. The Tribunal noted¹⁰⁴ that Mr Senwah applied for a prospective marriage visa (Subclass 300) on 8 March 2012 and this was refused by the Minister's Department on 11 October 2013. It also noted the delegate placed weight on a fraudulently altered photograph provided in an attempt to show the parties together in 2007¹⁰⁵. Ms Massaquoi gave the Tribunal a copy of the delegate's decision with the application for review¹⁰⁶. The Tribunal also discussed this issue with Ms Massaquoi¹⁰⁷ and Mr Senwah at the hearing¹⁰⁸. It found the parties' preparedness to provide a fraudulent photograph to the Minister's Department impacted adversely on their general credibility¹⁰⁹.
45. There are ample references throughout the Tribunal's decision to indicate that it considered the evidence and documents provided in support of the parties' application but the Tribunal ultimately concluded that such evidence did not overcome the various concerns it identified. The Tribunal was entitled to resolve questions of credit,

¹⁰³ *Applicant WAEE v Minister for Immigration* (2003) 75 ALD 630 (FCA/FC) at [46]

Minister for Immigration v SZNSP (2010) 184 FCR 485 at [37]-[38]; *Minister for Immigration v SZJSS* (2010) 243 CLR 164 at [35]

¹⁰⁴ at CB 330, [11]

¹⁰⁵ CB 330, [14]

¹⁰⁶ see item 28(b) of CB index; CB 330, [14]

¹⁰⁷ CB 331, [23]

¹⁰⁸ CB 334, [43]

¹⁰⁹ CB 339, [76]

attribute weight to particular evidence and consider the inherent improbability of events¹¹⁰.

46. On any view, the Tribunal's decision was not illogical or irrational. As Crennan and Bell JJ found in *Minister for Immigration v SZMDS & Anor*¹¹¹ (*SZMDS*), the test for illogicality or irrationality must be to ask whether logical or rational or reasonable minds might adopt different reasoning or might differ in any decision or finding to be made on evidence upon which the decision is based¹¹². The decision was not "one at which no rational or logical decision maker could arrive on the same evidence"¹¹³. Nor was there an "absence of a logical connection between the evidence and the [Tribunal's] reasons"¹¹⁴. It is not open to a court on judicial review to find a decision was irrational merely because, on the material before the decision-maker, the court would have reached the requisite state of satisfaction¹¹⁵. The concerns that the Tribunal identified with the evidence provided a proper and rational context for its conclusion that Ms Massaquoi and Mr Senwah were not in a genuine relationship. There is no basis to contend that its decision was arbitrary or irrational. These complaints, as set out extensively in Ms Massaquoi's submissions, are little more than emphatic expressions of her disagreement with the Tribunal's factual findings.

Ground 4 – did the Tribunal have regard to the claims made?

47. I accept the Minister's submissions on this ground.
48. Contrary to the complaints in Ground 4, the Tribunal plainly had regard to the claims that Ms Massaquoi and Mr Senwah were formally engaged in 2007¹¹⁶ and married in 2014¹¹⁷. The contention the Tribunal failed to have regard to the claim that the marriage was bona fide is baseless as it expressly considered this question. Whilst it accepted the

¹¹⁰*Minister for Immigration v Wu Shan Liang* (1996) 185 CLR 259 at 281-282

¹¹¹(2010) 240 CLR 611

¹¹²*SZMDS* at [131]; see also at [78] where Heydon J characterised the issue before the Court as one on which "minds might differ"

¹¹³*SZMDS* at [130]; see also: *SZOOR v Minister for Immigration & Anor* (2012) 202 FCR 1 at [84]-[85] and [113]

¹¹⁴*SZMDS* [51] per Gummow ACJ and Kiefel J

¹¹⁵*SZMDS* at [124]

¹¹⁶ CB 331-338, [19], [21]-[22], [41], [66], [72], [80]

¹¹⁷ CB 330-339, [12], [24], [37], [55], [67], [69], [80]

marriage was valid¹¹⁸, it was ultimately not satisfied that the applicant and visa applicant had a long term commitment to the relationship¹¹⁹. To the extent that Ms Massaquoi contends that the Tribunal ought to have reached a different factual conclusion in this regard, such a complaint again invites merits review, which the Court cannot undertake.

Ground 5 – unreasonableness

49. This ground cannot succeed. I accept the Minister’s submissions.
50. The Tribunal was entitled to accept or reject or give such weight to the evidence proffered as it considered appropriate in all the circumstances¹²⁰. The Tribunal engaged in an appropriate and uncontroversial weighing of the evidence that was before it and the findings and reasons it made were open to it on the available materials and for the reasons it gave.
51. Ms Massaquoi also contends that the Tribunal’s decision was “unreasonable” because it failed to put any weight on extensive evidence of ongoing telephone and email communication and third party evidence and instead found that the relationship was not genuine. She also contends the Tribunal’s findings on Ms Massaquoi’s evidence about how the parties met and their development of their relationship was inappropriate and not realistic given the cultural and geographical situation of the parties.
52. Contrary to the allegations in Ground 5 (and as noted above), the Tribunal did give some weight to some of the supporting evidence provided by the parties and their witnesses. As noted, the question of weight is a matter for the Tribunal to determine. Unreasonableness is not a means for challenging a decision on the basis that the Court disagrees with the consideration of matters or the evaluative judgments made by the decision-maker¹²¹. “Unreasonableness” denotes that a decision-maker has come to a conclusion so unreasonable that no

¹¹⁸CB 336, [55]

¹¹⁹ CB 339, [81]

¹²⁰*Lee v Minister for Immigration* [2005] FCA 464 at [27]

¹²¹*Minister for Immigration v Li* (2013) 297 ALR 225 (*Li*) op. cit., at [30]

reasonable decision-maker could have come to it¹²², or where a decision has been made that lacks an “evident and intelligible justification”¹²³. The test for unreasonableness is “stringent” and only arises in rare cases¹²⁴. The Tribunal’s decision is not one that no reasonable mind could have come to on the evidence before it¹²⁵. Again, Ms Massaquoi’s complaints in Ground 5 and particularly that Ms Massaquoi should not be “punished” by the prior failed partner visa application, are, in substance, emphatic expressions of her disagreement with the Tribunal’s factual findings¹²⁶.

Grounds 6 and 7 – an invitation to merits review

53. As the Minister correctly submits, the complaints in Grounds 6 and 7 again take issue with the Tribunal’s factual findings and reasons and seek to assert different factual considerations in assessing what weight ought to have been given to the claims and evidence that was presented. These are not proper grounds of review but simply invite the Court to reach different factual conclusions to the findings made by the Tribunal. As noted above, the Tribunal considered the claims and evidence advanced by the parties but after considering and weighing the evidence, it was not satisfied they were in a genuine relationship. The complaints in these grounds also essentially seek impermissible merits review and cannot succeed.

Other considerations

54. It is unfortunate that Ms Massaquoi could have given a better account of her circumstances to the Tribunal. Ms Massaquoi came to this country as a refugee from Liberia and, through her counsel, told me at the hearing before me that she remained afraid to return to Liberia until about 2012. She did not put that to the Tribunal. Had she done so, it may have helped to explain the long gap in her relationship with Mr Senwah after 2007 when they first met. Ms Massaquoi also could have given a better account of the circumstances in which she and Mr

¹²²*Li* at [28] per French CJ (citing Lord Greene MR in *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223 at 234)

¹²³*Li* op. cit., at [76]

¹²⁴*Li* op. cit., at [113]

¹²⁵*Ibid* at [130]

¹²⁶*SZMDS* at [124]

Senwah first formed a connection in 2007. As I put to her counsel during oral argument, it is quite plausible that, at that time, Ms Massaquoi, who was caring for four young girls in a refugee camp in Sierra Leone, would have seen the benefit of obtaining the help of a male protector. Again, Ms Massaquoi did not put that to the Tribunal, which doubted her account of how she and Mr Senwah met.

55. These are matters which the Minister could give further consideration to if his intervention were to be requested, and if the Minister were minded to consider that request.

Conclusion

56. Ms Massaquoi has failed to establish that the decision of the Tribunal is affected by any jurisdictional error. The decision is therefore a privative clause decision and the application must be dismissed.

57. I will so order.

58. I will hear the parties as to costs.

I certify that the preceding fifty-four (54) paragraphs are a true copy of the reasons for judgment of Judge Driver

Date: 28 October 2016